

## ETHICS COMMITTEE

DATE: March 19, 2009

CALLED TO ORDER: 5:31 p.m.

ADJOURNED: 8:13 p.m.

### ATTENDANCE

#### Attending Members

Ginny Cain, Chair

Jose Evans

Robert Lutz

Brian Mahern

Mary Moriarty Adams

Kent Smith

#### Absent Members

### AGENDA

Continuation on goals and objectives of the Ethics Committee

## ETHICS COMMITTEE

The Ethics Committee of the City-County Council met on Thursday, March 19, 2009. Chairwoman Ginny Cain called the meeting to order at 5:31 p.m. with the following members present: Jose Evans, Robert Lutz, Brian Mahern, and Mary Moriarty Adams. Kent Smith arrived shortly thereafter. Representing Council staff was Robert Elrod, General Counsel.

Chairwoman Cain asked all Councillors to introduce themselves. She said everyone on the Committee has received the latest draft of the Ethics ordinance that they have been working on (attached as Exhibit A).

Mr. Elrod said the draft shows the proposed changes that were discussed at the last Ethics Committee meeting. Chairwoman Cain said that she also asked that the words "announcement of" in the last sentence on page two be changed to "call for." She said she felt that would clarify the statement more, because Councillors have until the President actually calls for the vote. Councillor Mahern said that there are also instances when there is no participation of a Councillor at all. He asked if changing those words would create the possibility where a Councillor might participate in a debate they should not be a part of. Mr. Elrod said this statement only relates to whether the vote can later be challenged. He said the challenge can be announced at any time, even before the discussion; but this states that it cannot be challenged after the vote has been called for. Councillor Mahern asked if there are provisions that deal with the proper time to challenge a Councillor's participation in a debate. Chairwoman Cain answered in the affirmative.

Councillor Mahern said the general language about disclosing conflicts of interest and providing a guide for ethical conduct is the guiding principal for the questions he will later ask.

Mr. Elrod said Sec. 1 should probably be changed to Sec. 2 and vice versa, because Sec. 2 currently lists the standards of the rule, and the other section indicates how to enforce those standards. Mr. Elrod said he made changes to Sec. 151-1122, subsection (b) - page 4 of Exhibit A - that reflect the discussion at the previous committee meeting. He said they attempted to get more specific about which two circumstances would constitute a conflict of interest. He said subsection (b)(1) deals with the Economic Interest that is required to be disclosed as stated in Sec. 151-1123.

[Clerk's note: Councillor Smith arrived at 5:33 p.m.]

Councillor Lutz asked if the definition of children in Sec. 151-1123 is specific to minor, dependant children. Mr. Elrod answered that there is no definition of children in that section; it simply refers to the interest that is required to be disclosed. He said the sub-committee discussed how far to go with family, and decided to include spouse, children and parents. Councillor Lutz said he does not have a problem with minor children, but he is not always certain what interest his adult children may have. Chairwoman Cain said when in doubt, a Councillor should disclose any potential conflict. Councillor Lutz said that the problem is that it would be a disqualification from the vote. He said he does not have a problem disclosing information, but he does not want to disqualify the representation of his constituency if it is not necessary. Chairwoman Cain asked if it would make a difference to increase the amount. Councillor Lutz answered that the issue is that he does not know how much of a benefit, if any, an adult child would receive, and he

would have to disqualify himself on the possibility of a conflict. Chairwoman Cain said the point was to protect Councillors from having relationships in which their child has a contract with the city, but she understands Councillor Lutz's point. Councillor Lutz said he believes that a Councillor should disclose the information if they are aware of a conflict, but he does not want to see where a Councillor unknowingly votes and is later penalized or criticized by the media. Chairwoman Cain said that is what the sentence on page two addresses; the Councillor's vote cannot be challenged once the vote is taken. Mr. Elrod said he struggled with the idea of whether or not to make it a knowledge test, because that can be subjective.

Councillor Lutz said this is something to address, as the Council position is part-time and many Councillors have full-time jobs. In addition, many times a Councillor may not know what contractual interests their parents have either. Chairwoman Cain said they had a family business in mind when drafting this section.

Councillor Mahern said he agrees with Councillor Lutz and he is troubled that there could be an instance where a Councillor had no knowledge, but is found to have interest and has to appear before the Ethics Committee. He said there are circumstances where some information would not be required to be disclosed. For example, if he is employed by a company and receives more than \$1,000, it would have to be reported. However, if another Councillor receives consulting or legal fees of \$100,000, they would not be required to report that because they are self-employed. He said he would hope that Councillors would abstain from a vote in this instance. Councillor Mahern said that he believes that the interest should be reported in both cases.

Chairwoman Cain said the Committee needs to look at the circle of influence and whether or not children and parents need to be included. Mr. Elrod said maybe if only a direct benefit to the Councillor and spouse is included, then there may be some question as to whether the Councillor would be disqualified to vote, even though it is not an actual conflict. Chairwoman Cain asked in an instance where someone knowingly votes on something and it passes, can that vote later be challenged. Mr. Elrod answered that he does not believe that it can be challenged afterward.

Councillor Moriarty Adams said that she can see how parents and adult children can raise issues under the circle of influence, but she is thinking about how it can be made reportable without being punishable. She asked if the Committee feels that there is a potential for the Council to get into trouble with constituents or the press about family members. Mr. Elrod said even if something is taken out as an actual conflict of interest, it will likely still fall under an appearance of a conflict, and the Councillor should still abstain. Chairwoman Cain said if a Councillor is unaware of a potential conflict and no one brings it up, then it is done once it is voted on. Councillor Lutz said the issue is the distinction between a challenge to a vote and a later challenge after the vote. He said he encourages everyone to disclose a possible conflict. He said he wants to be sure the issue is addressed before a Councillor has to go before the Ethics Committee to defend their vote.

Councillor Evans asked what happens if a Councillor does not believe that he should refrain from a vote. Chairwoman Cain answered that it would be at the discretion of the Full Council. Councillor Evans asked if the Committee feels that some of the issues being discussed could be resolved if the "value in excess" amount is increased. Mr. Elrod said the first question is what the grounds are for disqualification, as the language in the new Ethics ordinance that has already

been adopted is very broad. He said the ordinance states that the Committee may receive and hear any complaint which alleges any violations in the standards of ethical conducts of Councillors, regardless of when the violation or misconduct is alleged to have occurred. Mr. Elrod said he believes the intention is that the actual disqualification would have to be raised and disposed of by the Council before the alleged improper vote is taken, but that may need to be amended so that it is not raised again at a later time by a third-party. Chairwoman Cain asked if it should be allowed to be raised again. She said there is a difference in someone honestly not knowing and someone knowing of a conflict who does not disclose it. Mr. Elrod said there are different levels at which issues might be raised. For example, if the question is raised at a Council meeting, and the Council decides the issue is not a conflict, an outside attorney could later raise the question. However, this ethics draft does not address an issue that is never raised and is later discussed. Mr. Elrod said it is one thing if no one knew of the conflict and it did not get raised because it did not get disclosed. In that case, the question would be whether or not the failure to disclose the conflict should be challenged. Chairwoman Cain asked if Mr. Elrod has a backup to address someone that is doing something unethical. Mr. Elrod said that there needs to be a way to resolve allegations without allowing them to linger. Chairwoman Cain said she believes that a time limit definitely needs to be put on allegations. Mr. Elrod said restricting the language to only include Councillors and their spouses does not necessarily restrict someone from voluntarily disqualifying themselves under the voluntary disqualification section.

Councillor Smith said maybe there should be a clause that indicates dependent children or an adult within the household, with something separate and a higher dollar amount for adult children outside of the household. He commented that adding the word "actual" to the draft was a good edition, as actual conflicts of interest are things that can be documented, and he believes that the Committee needs to move closer toward the documentation of things as opposed to the perception of things. Chairwoman Cain said the appearance clause is good in cases when an actual conflict is unknown, and disclosing the information is safe.

Councillor Mahern said that Councillors vote on a tremendous amount of items, and they sometimes have greater involvement than others. He said there is an expectation that the right decision will be made. He said the best way to avoid a conflict is to be aware of the conflict, and family members of Councillors should disclose any income they receive related to the City. He agreed that the form should state dependent children, as Councillors would be involved in the affairs of their dependent children. But Councillors are obligated to report their involvement; and there is not an obligation for family members, such as parents or adult children, to report.

Chairwoman Cain said there are instances of an actual conflict and a volunteer appearance of a conflict. She asked what happens if someone simply wants to disclose information, but still vote on an issue. Mr. Elrod said there will always be things that someone does not know about. The question is whether to be objective or subjective. He said to be subjective, they would have to find out if a Councillor knew about an issue; and to be objective, they would have to find a standard of proof. For example, a bunch of condemnation cases on Fall Creek were voted on recently to approve real estate purchases for a sewer project. The outcome of the vote would give money to some people. Mr. Elrod asked if a Councillor should be disqualified to vote if their parent happened to be one of those persons. Councillor Mahern said that falls in line with his question of a Councillor advocating for his constituents if the Councillor or a family member may also benefit from the action.

Councillor Smith said the difference is that there is a direct monetary amount going to a family member. If the Council does not set guidelines with restrictions, representation of constituents may be skewed. Therefore, guidelines need to be set. Councillor Smith said for the example that Mr. Elrod gave, a Councillor should be able to advocate for their constituents, but should also abstain from the vote due to the direct monetary benefit to a family member. He said he believes that some of the verbiage is too open, but some of it needs to remain open because the Committee will not be able to cover every situation that may happen. Some judgment calls will have to be made. Mr. Elrod said he believes there will be very few cases in which the Council will take a vote to give a direct pecuniary benefit to anyone. Mr. Elrod said he believes that Councillors should be disqualified from voting when an actual benefit can be identified. He said there is also language in the ordinance that refers to broader kinds of benefits or detriments for a Councillor or his family which would be different from those things that would apply to the public. Councillor Mahern said that a direct pecuniary benefit is also different than a private personal interest. Chairwoman Cain said she believes the Committee should stay as close to the actual Councillor relationship and money as possible. Mr. Elrod said that maybe there can be a provision that indicates an interest that is different from what the public receives generally.

Councillor Lutz asked if the word "or" between Sec. 151-1122(b)(1) and (2) should be changed to "and." Mr. Elrod answered that there is a possibility of (b)(2) being things other than direct monetary benefits. Councillor Moriarty Adams asked if Councillor Mahern and Mr. Elrod are suggesting that a benefit received by everyone on the street, even though money will be given to each person, would be an indirect benefit; and the fact that a family member's business may win a city contract would be a direct pecuniary interest. Mr. Elrod answered in the affirmative, but suggested that the Committee put the language "different from the public generally" in both (b)(1) and (b)(2). Councillor Moriarty Adams agreed, and stated that it could be proven that many households received the monetary benefit, as opposed to the Councillor's family member only. Councillor Mahern also agreed, and said that the language would also address the concerns that he has expressed. Councillor Lutz said there could still be a question as to how a Councillor would have voted for an issue if it did not involve their family members. Chairwoman Cain said, in that case, a Councillor can defend their vote and explain the rules to the public. She asked if the Committee has decided to take parents and children out of (b)(1). Councillor Moriarty Adams answered that it should be kept in.

Mr. Elrod said that maybe some of the disqualifying language should be moved into the perceived conflict provision. He said perhaps this section can be changed to include Councillors, spouses, and dependent children. Then parents and adult children can be included in the pecuniary benefit provision and be subject to voluntary disqualification. Councillor Lutz agreed with Mr. Elrod, and stated that other sections of the Code specify dependent children as well. Mr. Elrod said the terms used in the remainder of the Code indicate relatives and include everyone, including stepchildren and grandchildren. Mr. Elrod said he will attempt to change the language in Sec. 151-1122(b)(1) and (2) so that the language applies to both paragraphs.

Chairwoman Cain asked if the current dollar amount is okay. Councillor Mahern said he believes that the dollar amount is okay given that the language will be changed. He said everything is tied to that which is required to be disclosed, and much of the instances will be reflected in disclosure reporting. Mr. Elrod said not all of the interest of spouses and children is required to be reported. He said there are two clauses that state: one is a direct benefit to a

Councillor, Councillor's spouse or dependent children over \$1,000, the second is to any business that a Councillor, Councillor's spouse or dependent children has an interest in.

Councillor Mahern asked, with respect to Sec. 151-1122(c), if the mere suggestion by another member of a committee or the Council could be the sole grounds on which someone is considered to have a conflict. He asked how a situation would be dealt with if there is disagreement as to whether or not there is a conflict. Chairwoman Cain said that would fall under Section 151-52(b), Challenges. Mr. Elrod said he believes that the ordinance should state that a Councillor *should* abstain from voting, but the judgment of whether that Councillor does or does not abstain should be left for someone else to later decide. Councillor Moriarty Adams agreed, and asked if a conflict would actually have to be proved, as that may not be possible to determine on the Council floor.

Councillor Lutz suggested that the words "whether acknowledged by the councillor or suggested by another" in Section 152 **be stricken**. He also stated that he is not sure that Councillors should have to withdraw from further debate. Councillor Mahern said that he believes this section refers to actual conflicts, as opposed to perceived conflicts. He said with perceived conflicts, a Councillor is allowed to participate in debate, but with actual conflicts they are not. Councillor Lutz said he does not feel that a Councillor should have to withdraw from debate and not be allowed to represent their constituency. He said how much weight is given to that Councillor's input on a debate in which there is a conflict that was disclosed should be determined by the Council and the public. Chairwoman Cain said that a Councillor should state the conflict before any debate begins. Councillor Lutz said that he believes that Sec. 151-1122(c) should read the same as shown on page four of Exhibit A. Councillor Mahern asked if the challenges as described on page two of Exhibit A apply when there is an honest difference of opinion about whether or not a conflict is apparent. Mr. Elrod answered that the challenges apply to actual voting. He said he believes that it is contemplated that a conflict will either be raised in committee or on the Council floor if a Councillor has not decided to abstain before that point.

Councillor Mahern asked if a Councillor can be disqualified from voting at the committee level if another Councillor is challenging their right to vote. Mr. Elrod answered in the negative, and stated that disqualification is only effective at the full Council level. Councillor Lutz said that the provision refers to all votes upon final adoption. Mr. Elrod said he feels that the question as to whether there is an actual conflict should be decided on the Council floor before the final vote of an ordinance is taken. He said if it is apparently clear to everyone that there is a conflict that a Councillor will not declare, the Councillor should not vote even at the committee level. However, if it is a matter of judgment on whether or not a Councillor has a conflict, then it should be handled at the full Council level. Mr. Elrod said he believes to some extent it should be left to the Councillor to make a good-faith decision. Councillor Mahern asked if a Councillor should simply abstain at the suggestion of a conflict to be safe. Mr. Elrod answered that this decision should be left to the Councillor. Councillor Mahern said he does not feel that a Councillor should abstain simply on the suggestion of a conflict, as constituents have an expectation of their Councillor's participation, and more participation is always better than less.

Councillor Smith said a majority of the City's laws have been established as generic laws or common laws that were then built to be more specific, because of case ruling. He said, therefore, even once the guideline is established for the Ethics ordinance, it will be better defined once

instances occur. He said it is better for the Committee to establish a guideline to be amended than not to have a guideline in place.

Chairwoman Cain said she believes the probability of someone knowing an actual conflict of interest exists for another person with that person not being aware of that conflict is very rare.

Councillor Mahern said he believes that there will be no unfounded accusations made about another Councillor. However, unlike common law, there is a certain connotation to having matters brought before the Ethics Committee. In that kind of context, a bell rung is significant. Chairwoman Cain agreed, and stated that this is the reason the Committee needs to look at what could happen.

Mr. Elrod said that the title for Sec. 151-1122(c) should possibly be changed to better fit the changes suggested. Chairwoman Cain added that the "of" in the title of Sec. 151-1122(b) should also be stricken.

Councillor Mahern said, with respect to subsection (e) on page five, the idea is that a Councillor may request to abstain from voting on an appearance of a conflict. He asked if the Council as a whole determines that the Councillor must participate, if the Councillor must then participate. Chairwoman Cain answered if it is to secure a vote in order for a case to be decided. Mr. Elrod said if that Councillor's abstention would leave the vote tied, then the Council could decide to compel that Councillor to vote. He said that is essentially the rule of the House of Representatives. Councillor Mahern asked how that would be handled in the case of an actual conflict. Mr. Elrod answered that the Councillor could not be compelled to vote. Councillor Mahern said in an instance where a Councillor is required to vote, it should be noted that it is not a conflict of interest, actual or perceived. Chairwoman Cain said she believes if this type of incident would ever happen, it would invoke the provision and be explained on the Council floor. Councillor Mahern asked if there is any objection to adding language to this subsection that would state that Councillor participation would not be considered an appearance of a conflict if that Councillor is required to vote. Councillor Lutz suggested that a sentence be added to that subsection as shown in Exhibit A. Mr. Elrod said he will see what he can do about implementing an additional sentence in the paragraph. He added that he does not see that as a problem, because historically the law states that one cannot abstain. He also stated that he cannot think of an instance when, politically, it would possibly happen.

Mr. Elrod said Sec. 151-1123 is proposing that Councillors file a Conflicts Disclosure rather than the Disclosure Statement they are otherwise required to file under the City Ethics Disclosure. He said the list of what would be disclosed on the new form is on page five and six. He said he tried to clean up the compensation provision with the employed and self-employed. For example, Councillor Lutz is a self-employed lawyer and does business under the name of Lutz and Associates. Therefore, Councillor Lutz would list the information as such. Otherwise, a self-employed person would have to individually list all clients or customers.

Councillor Evans asked if this would require Councillors to list their employer if they make more than \$1,000. Mr. Elrod answered in the affirmative. Councillor Evans asked if they are also required to list that information for their spouses. Mr. Elrod answered in the affirmative, and stated that the idea is to disclose where a Councillor may have conflicts. Councillor Evans said

he agrees with the section that states the information should be disclosed or stated, but he does not feel that they should have to list all the information on a form. Councillor Mahern said the whole purpose of requiring disclosure of a conflict of interest and providing a guide for ethical conduct is so that the Council can promote faith and confidence to citizens and its government. He said he feels that the general public should know from whom Councillors, their spouses and dependent children receive money, because it may be relevant for people's consideration on how Councillors conduct themselves on the Council. However, he does not feel there should be a difference in how compensation is reported for Councillors who have a regular job and those who are self-employed. Mr. Elrod said the issue is where the line is drawn. He said the way compensation is to be reported can be as vague or as specific as the Committee desires. For example, if the Committee is asking a self-employed Councillor to list all of his clients, would it then also be necessary for a regularly employed Councillor to list all of his employer's clients.

Chairwoman Cain asked who will be allowed to see this disclosure form. Mr. Elrod answered that it will be for public view. Chairwoman Cain asked where the form will be kept. Mr. Elrod answered that they have not yet decided, but he believes it will be published on the Council website along with the Councillor's information. Councillor Mahern said he is not necessarily stating that someone should disclose their entire client list, but he is pointing out that there can be a potential for a conflict of interest, perceived or actual, and the information is not available for those self-employed Councillors.

Councillor Lutz agreed with Councillor Mahern, and stated that he too is concerned with where the Committee should draw the line. He said in his case, he is an attorney bound by the rules of professional conduct, and he is not sure that the mere fact that he represents someone is a confidential matter, but he would allow his client to decide whether or not it should be confidential. However, he said if he was a general contractor, he would not feel that his client list should be confidential. Chairwoman Cain said the provision also states that the nature of the business or businesses conducted as self-employment must also be disclosed.

Councillor Mahern asked if a Councillor was an attorney who worked for a firm, and one of the firm's clients came before the Council to do business with the City, if that Councillor would have to disclose that. Councillor Lutz answered that the Councillor would in fact benefit from that, even though it would not be as direct of a benefit as if the company was a client of a self-employed Councillor. Chairwoman Cain said the hope is that people will be honest, and the Committee must keep in mind that Councillors are part-time, and they either have another full-time job or have spouses that have a full-time job.

Councillor Moriarty Adams asked if there is a way that a Councillor who is an attorney, whose clients are doing business with the City, can list those clients. Mr. Elrod said the question would be whether or not that information is known by the Councillor. Chairwoman Cain said by listing the client, if someone wanted to find out if there is business with the City, one could simply check out the clients listed. Mr. Elrod said he, as an attorney, cannot disclose his clients unless he has their permission to do so. Councillor Mahern said he has an issue with this because the Committee is placing a legal requirement for this information to be disclosed by those who are regularly employed as opposed to those who are self-employed.



Chairwoman Cain asked if Councillor Lutz received information from Council staff on disclosure forms from other states. Councillor Lutz answered in the affirmative. Chairwoman Cain said maybe some of the Committee can look through the information to compare the language used by other states to help with making a decision as to what language they should use. Councillor Lutz said he is not sure if the information he has gives specific details as to the language of the disclosure forms.

Mr. Elrod said the City currently requires the name of any business entity for which an individual received any compensation, which to the best of his/her knowledge does or intends to do business with an agency during his/her term of office. Councillor Lutz said it would be difficult for a Councillor to disclose what a company could do years from now. Councillor Mahern said that language speaks more to his concern of the difference between regularly employed and self-employed Councillors. Councillor Smith said that language goes in the opposite direction by requiring those self-employed Councillors to list any entity from which they received compensation that does or intends to do business with the City.

Mr. Elrod said that this is the disclosure form that the Council will use if they do not pass a new form before May 1. Councillor Mahern asked if a Councillor was employed by someone who does not do business with the City, and there was no possibility of doing business with the City, would that employer have to be disclosed. Mr. Elrod said there is another section that requires Councillors to disclose their employers; this is a different section. Chairwoman Cain asked how it is worded to include those who are self-employed. Mr. Elrod said it does not address self-employment, it simply states to list the employer.

Councillor Lutz asked how compensation is defined. Mr. Elrod answered that compensation is defined as any money, thing of value or other financial benefit conferred on or received by any person in return for services rendered or services to be rendered, whether by that person or another.

Councillor Smith said he believes the disclosure needs to be narrower, because it can create an opportunity for someone to say they are an employee of a company because money is not paid out directly to them, when in fact they are the owner of something like a sole-proprietorship.

Mr. Elrod asked if the Committee would like to remove the word "parents" and add the word "dependent" in front of children in Sec. 151-1123(4). Councillor Moriarty Adams said she thinks it is important to keep that in this particular section. Councillor Lutz said he thinks that he would be aware of companies where his children own more than 10%. The Committee agreed to keep the word "parents" and not to add the word "dependent." Councillor Smith said that the Committee needs to decide what measure will be put on accepting "the knowledge of." Chairwoman Cain said she thinks that if the information is known, it should be disclosed, and if it is later discovered, it can be disclosed on the form at that time.

Chairwoman Cain said number five on page six is simply to keep track of the boards that Councillors sit on, so there is no potential for conflict. Councillor Mahern asked if attorneys or people who are involved in running companies are considered board members or officers. Mr. Elrod answered that they can be considered that if they are sitting on the board of a company or

business. They must disclose it if the company does or contemplates receiving funding from the City.

Councillor Lutz said he has an issue with the words “intends to” and “contemplates”, because it may never come to fruition. The Committee suggested that the word “contemplates” in number five be stricken and replaced with the words “applies for.” Mr. Elrod suggested that the words “intends to do” be stricken and replaced with the word “solicits.”

Mr. Elrod said he added the last sentence in number six, to broaden the gifts provision and exclude things from family members and on-going relationships. He said the addition makes it reasonably close to what is in the Ethics Rules of the House of Representatives. Councillor Evans asked if that includes meals. Chairwoman Cain answered if the meal costs over \$100. Mr. Elrod said there may still be some needed modifications to agree with the Lobbying Registration Proposal. He said lobbyists have to disclose gifts, but he is trying to be sure that the Council provision does not cause someone to question anything.

Mr. Elrod said that Sec. 151-1124(b) was rewritten to prohibit the use of Council equipment or supplies. He said originally it stated city property, and there was a question of what that could include. He said the last change was to subsection (c) to obtain a little ambiguity, as some conferences are not full days.

Councillor Mahern asked, with respect to Sec. 151-1123(7), if someone is no longer doing or actively seeking to do business with the City, would they have to file it so that it terminates. Mr. Elrod said one would not have to report that, but it would be beneficial to them if they did. He said the concern was more about additions or changes in circumstances.

Councillor Moriarty Adams asked if the Committee is primarily stuck on disclosure of employers and spouse’s employers. Chairwoman Cain answered in the affirmative. Councillor Mahern said he would like to receive information about how the forms of other states are written. Councillor Lutz said he will go through the information that he has, but he has noticed that there is no distinction on Councils that are part-time versus full-time.

Councillor Moriarty Adams said she hopes that there will be a document created that will go forward regardless of who controls the Council. The Committee agreed.

Mr. Elrod said the Council becomes subject to the filing of the other Disclosure Statement on May 1. He said, therefore, something will need to be introduced to the full Council by the first meeting in April. Councillor Lutz asked if the ordinance is introduced as is, will it have to be heard by the Committee again. Mr. Elrod answered in the negative, but stated that there would have to be consent given to introduce and pass the proposal on the same night. He said he is concerned with whether the Committee is ready to introduce anything. Chairwoman Cain asked if just the form can be introduced to be adopted by the Council. Mr. Elrod said that something needs to be passed that will except the Council from filing the other form. Councillor Moriarty Adams asked if the Committee could put together an ordinance that states they are developing a form for the Council to file. Councillor Mahern asked if the Committee could introduce an ordinance modifying the filing date and allowing more time for them to develop a form. Councillor Lutz said he believes that the Committee could sponsor a proposal extending the

deadline for Councillors until such time as the Council would adopt an Ethics proposal for the Council. Councillor Moriarty Adams said they could put a deadline of no later than August 1. Councillor Lutz said maybe an extension ordinance can be introduced and voted on at the Council meeting. Councillor Moriarty Adams asked if the extension would only exempt the Councillors. Mr. Elrod said that it should only exempt Councillors, and possibly the Council staff. He said there is an open question in the Statute about whether the Council staff and employees are exempted if the Council is exempted. He said there is at least an argument that the Clerk, the two Assistant Clerks, the General Counsel, the Minority Counsel, and the Chief Fiscal Officer need to file a financial statement under the City Ethics definition of employee. Mr. Elrod said he believes that may be an unintended definition. Chairwoman Cain asked if Mr. Elrod can draft an ordinance to be introduced at the April 13<sup>th</sup> meeting. Mr. Elrod answered in the affirmative. Mr. Elrod said the best approach would be to postpone the deadline for something like 60 days.

With no further business pending, and upon motion duly made, the Ethics Committee of the City-County Council was adjourned at 8:13 p.m.

Respectfully submitted,

Ginny Cain, Chair  
Ethics Committee

GC/nsm

## DRAFT OF ETHICAL STANDARDS PROPOSAL

March 2, 2009 (11:43am)

SECTION 1. Amend Sec. 151-52 to read as follows:

Sec. 151-52. Roll call votes.

(a) Recorded votes. All votes upon the final adoption of proposals for ordinances or general resolutions, motions to reconsider or motions to suspend the rules, shall be by roll call vote. If electronic or mechanical voting systems are installed for use by the council, the recording of the vote by such methods shall be the same as a vote by calling the roll and may be used for the roll call at the opening of a meeting and to determine a quorum. All ordinances or resolutions shall be adopted solely upon the affirmative vote of a majority of all members of the council. All members present shall vote on all roll call votes except where unless under Sec. 151-1121 a member is permitted to abstain or is disqualified.

(b) Abstentions:-

(1) It is recognized that service as a member of the city-county council is a part-time endeavor and that members of the city-county council are individuals who are active in the community and elsewhere and that it is necessary that they maintain a livelihood and source of income apart from their council compensation.

(2) During the course of council duties, a councillor may be placed in a position where the councillor has a duty to vote on a proposal in which the councillor has a direct and indirect financial or personal interest. In making a decision pursuant to subsection (a) of this section as regards such councillor's duty to vote when present, the councillor shall consider the following:-

a. Whether the councillor's interest in the legislation is so substantial as to affect the councillor's independence of judgment with respect to such legislation;

b. To what extent the councillor's interest in the legislation mirrors the interest of the

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citizenry to whom the councilor is directly responsible;

e. The effect of the councilor's participation in the voting on the legislation on public confidence in the integrity of the council;

d. The need of the councilor's particular contribution, such as special knowledge of the subject matter, to the effective functioning of a citizen legislative body;

e. Whether the proposal would have a unique, direct and material effect on the councilor's nonlegislative income; a member of the councilor's immediate family or those of a partnership, corporation or business in which the councilor holds a legal or equitable interest.

(3) Any councilor, who has a direct and material financial or personal interest in any matter pending before the council, which is so substantial as to affect the councilor's independent legislative judgment shall not be precluded from engaging in the committee or floor discussion and debate concerning such matter if such councilor shall publicly disclose such interest at the first meeting at which the matter is considered after such interest is apparent to the councilor or is suggested by some other person.

(4) Whenever, because of personal, business or financial relationships potentially affected by any matter pending before the council, a councilor believes that his participation in the matter might cause an appearance of impropriety even though there is not a disqualifying interest under subsection (b), such councilor shall disclose such relationship and may request to abstain from any votes on such matters. The presiding officer shall permit such abstention.

(b) Challenges. Whenever the propriety of voting of a councilor on any matter is challenged by another councilor and such councilor refuses to abstain, a motion shall be in order to disqualify such councilor on the grounds provided in subsection (b). Such motion shall be decided by majority vote of those present. If the motion to disqualify carries, the vote of such member shall not be counted on the matter with respect to which the councilor was disqualified. Unless the propriety of a councilor's vote is challenged under this subsection prior to the announcement of the vote by the presiding officer, the

call for

right of the councillor to vote shall not thereafter be challenged.

SECTION 2. Adopt a new Division 2 or Article XI of chapter 151, to read as follows:

Sec. 151-1121. General Ethical Considerations. Ethical standards for members of the City-County Council are essential to maintaining public trust in the handling of public affairs of the city and county. The purpose of this Article is to set forth those acts and actions that are incompatible with the best interests of the city and county by directing disclosure by councillors of private financial or other interests in matters affecting the city or county. By requiring disclosure of conflicts of interest and providing a guide for ethical conduct, the council can promote the faith and confidence of its citizens in its government.

(a) Duty to act in public interest. It is the duty of all councillors to act at all times in the best interest of the public and to avoid any appearance of acting in their own personal interest.

(b) Acknowledgment of part time councillors. It is recognized that service as a member of the city-county council is a part-time endeavor and that members of the city-county council are active in the community and elsewhere and that it is necessary that they maintain a livelihood and source of income apart from their council compensation. It is further recognized that state law permits employees of the city and county to be elected as, and serve as, councillors, even though the council must adopt budgets that includes appropriations to pay their salaries as employees of the city or county.

(c) Duty to disclose employment and material business interests. It is the duty of each councillor to disclose his or her employments and positions of control or ownership interests in businesses or civic organizations that have business relationships, contracts with, or are funded by, the city or county.

Sec. 151-1122. Conflicts of Interest.

(a) Voting. This section establishes standards for determining when a councillor is disqualified from acting or may be permitted to abstain from acting in conflict of interest situations.

(b) Actual ~~/~~ conflicts of interest. A councillor has an actual conflict of interest whenever the outcome of a vote on a matter before the council would either:

(1) confer a direct material pecuniary benefit with a value in excess of \$1000.00 which would be received (i) by the councillor, the councillor's spouse, parents or children or (ii) by any business in which the councillor, the councillor's spouse, parents or children have an interest that is required to be disclosed under Sec. 151-1123, or

(2) affect a private personal interest by conferring any preference or causing detriment to the councillor, his business, or family which would be different from that which would apply to the public or the councillor's constituents generally.

A councillor, who is also an employee of the city or county or other agency whose budget is subject to approval by the city-county council, shall not be deemed to have an actual conflict of interest with respect to votes on budgets or revenue proposals, unless the proposal pertains primarily to such employee or the employee's supervisor.

(c) Participation in debate. As soon as it becomes apparent that a councillor has an actual conflict of interest with respect to a matter before the council, ~~whether acknowledged by the councillor or suggested by another~~, the councillor shall immediately ~~withdraw from any further debate or participation in the matter either before a committee or the full council.~~ *disclose said conflict.*

(d) Disqualification from voting. A councillor with an actual conflict of interest shall be disqualified from voting on the matter.

(e) Appearance of a Conflict of Interest, Voluntary abstention. Whenever a personal relationship, business interest, or civic involvement of a councillor (other than those relationships inherent in the political process and in advocating constituent concerns) is such that it might appear to limit the councillor's objectivity on the merits of the councillor's vote, the councillor may request to abstain from voting on such matter. The abstention shall be allowed by the council, unless the abstention prevents the council from deciding the matter, in which circumstances the council by a majority vote of those voting may require the councillor to vote. The appearance of a conflict of interest shall not disqualify a councillor from debate on the matter if the nature of the perceived conflict of interest is disclosed as soon as it becomes apparent to the councillor. A vote under said circumstance shall not be grounds for an ethical challenge against that councillor.

Sec. 151-1123. Conflicts Disclosure<sup>45</sup>. All councillors shall file with the clerk of the council annually, on or before February 1, or within 30 days of taking office, a conflicts disclosure statement which includes the following information. Such disclosure shall be in lieu of the economic statement of interest required by Sec. 293-321 as an alternative form authorized by Sec. 293-323(a).

1. The name, residence and business addresses of the councillor.
2. The name and address of all employers from whom the councillor received compensation in excess of \$1000 during the prior calendar year and if self-employed, the nature of the business or businesses conducted as self-employment, and the names, if any, under which the business or businesses are conducted.
3. The name and addresses of all employers from whom the councillor's spouse or dependant children received compensation in excess of \$1000 during the prior calendar year.
4. The name and address of any business entity, doing business with the city or



county, or which ~~intends to do~~ <sup>Solicits</sup> business with the city or county, in which the councillor or the councillor's spouse, parents or children are an officer or owns an equity interest or interest in the earnings and profits of such business that, individually or in the aggregate, exceeds 10%.

5. The name and address of any organization which receives or ~~contemplates~~ <sup>applies for</sup> receiving funding from the city or county for which the councillor, councillor's spouse, parents or children serve as an officer or board member.

6. A list of those donors from which the councillor received gifts of any item valued over \$100 or in aggregate of over \$250 in the prior calendar year from a person or firm that does, or seeks to do, business with the city or county or seeks to influence council action. Campaign donors, subject to IC 3-9-2 and reported in accordance with law, and gifts from persons, including family members, with whom the councillor has an on going social relationship not related to service on the council are not subject to reporting under this provision.

7. Any items reported under 1-5 shall be updated within 45 days of the change of such information.

The clerk of the council, with assistance of the general counsel, shall prescribe a form for these disclosures. The clerk shall report any failures to file to the Ethics Committee of the council for such action as the committee may deem appropriate.

Sec. 151-1124 - Specific conducted prohibited.

(a) Political activity, patronage. Councillors shall not require any council

employees to engage in political activity or contribute to political campaigns.

- (b) Use of council property. Councillors shall not use council equipment or supplies for personal, political, or private business purposes.
- (c) Travel to conferences. No councillor shall accept reimbursement for travel, meals or lodging expenses related to municipal conferences unless the councillor attends two hours or more of meetings or official function per half-day.